

U.S.S.N. 10/774,692
Amdt. dated October 26, 2005
Reply to Office Action of July 26, 2005

6

Atty. Dkt. No. 77070

REMARKS/ARGUMENTS

Claims 11-33 remain in this application. Claims 1-10 have been canceled. Claims 1-10 had been withdrawn as the result of an earlier restriction requirement. Applicants retain the right to present withdrawn claims 1-10 in a divisional application.

Claim Rejection under 35 U.S.C. § 103(a)

Claims 11-33 have been rejected under 35 U.S.C. § 103(a) over Ohmura et al. (U.S. Patent No. 5,846,585).

Applicants traverse for at least the following reasons.

The present invention is directed to a process for providing toasted sandwich bread slices having crusts that remain chewable and crunchy in texture even after the sandwiches are frozen and reheated. This improved crust texture is achieved by a process of physically tenderizing the crusts of toasted bread slices before they are frozen wherein the bread crusts are cracked by application of compressive force to the toasted bread slices without permanently substantially flattening the bread slices. The cracked toasted bread are highly useful in constructing a sandwich that is frozen for stable storage, and later reheated for consumption without the crusts becoming overly hard, dry and difficult to chew.

Among other differences with the present claimed invention, Applicants point out that Ohmura et al.:

- fails to teach or suggest "providing a bread slice with a crust portion";
- fails to teach or suggest "toasting the bread slice"; and
- fails to teach or suggest "compressing the toasted bread slice" much less in a manner "effective to crack the

U.S.S.N. 10/774,692
Amdt. dated October 26, 2005
Reply to Office Action of July 26, 2005

7

Atty. Dkt. No. 77070

crust portion without permanently and substantially flattening the bread slice."

Instant independent claim 11 (and independent claim 23) recites all of these features which are not taught or suggested by Ohmura et al.

The Office Action acknowledges that "Ohmura et al do not disclose toasting, cracking the crust portion, the means of compressing as claimed grilling at the temperature and time claimed, the reduced thickness as claimed, applying edible oil and toasting using an impingement oven" (Office Action, p. 3).

Nonetheless, the Office Action is understood to urge that Ohmura et al disclose subjecting a heat-treated food product to a pressure compression treatment with a press for decreasing its bulk, and that the food product described by Ohmura et al. allegedly includes "bread slices" (Office Action, pp. 2-3).

The Office Action also is understood to indicate that Ohmura et al. describe subjecting the compressed food product to freezing, packaging and sealing, and that the food product can contain filling materials which may be introduced into the decreased bulk food after the bulk-decreasing treatment (Office Action p. 3).

Applicants point out that Ohmura et al. indicates the food product may include "breads such as loafbreads, bread type rolls, rolls of breads, croissants, rye breads, and sweet buns ... (col. 6, lines 17).

However, Ohmura et al. nowhere refers to bread loafs comprised of sliced bread, much less toasting and compressing treatments conducted on individual slices of crusted bread.

U.S.S.N. 10/774,692

8

Atty. Dkt. No. 77070

Amdt. dated October 26, 2005

Reply to Office Action of July 26, 2005

Instead, Ohmura et al. describes baking or steaming doughs to form the bread type food products, and thereafter the entire and still intact bread roll or loaf is subjecting to compression via press treatment or vacuum packaging (see, e.g., col. 6, lines 32-43; col. 8, lines 6-14.

Ohmura et al.'s Examples 2, 4-7, 18-33 clearly describe compressing an entire baked bread loaf, not a toasted bread slice, between compression press plates.

Moreover, Ohmura et al. does not teach or suggest slicing a bread loaf and then compressing the entire sliced loaf. Nor is it apparent that Ohmura et al.'s desired objective of decreasing bulk of the bread loaf would still be possible, even if, for sake of argument only, such a non-taught variation involving a pre-sliced bread loaf were attempted.

Ohmura et al. clearly does not teach or suggest compressing an individual toasted bread slice having a crust in the manner presently claimed, nor the possible advantages of such a treatment as performed on individual toasted slices of bread having crust.

Also, Applicants note that Examiner has referenced the passage at col. 19, lines 50-54 of Ohmura et al. which suggests that "the edible filling material may be introduced into the food having a decreased bulk at an arbitrary step after treatment for decreasing bulk, such as compression."

However, Applicants point out that Ohmura et al. provides examples of enrobing or wrapping fillings in dough prior to baking (see Examples 34-38). Ohmura et al. nowhere elaborates, exemplifies or otherwise enables one of ordinary skill on how to introduce filling into a previously baked bread loaf after the bulk-decreasing treatment. In any event, the operative word used in this regard by Ohmura et al. is the introduction of filling

U.S.S.N. 10/774,692
Amdt. dated October 26, 2005
Reply to Office Action of July 26, 2005

9

Atty. Dkt. No. 77070

"into" the food, which apparently refers to some result comparable to the above-referenced dough-enrobed filling products illustrated in Ohmura et al.'s examples 34-38, and not a layered sandwich construction. A sandwich construction involving discrete filling disposed between separate cracked-crust toasted bread slices is nowhere taught or suggested by Ohmura et al.

Ohmura et al. clearly do not teach or suggest "constructing a sandwich by placing an edible filling between the toasted bread slices having cracked crusts, and freezing the sandwich" (e.g., see instant claim 23).

Applicants also disagree with the speculation in the Office Action that "it is obvious cracking will result" from Ohmura et al.'s compression of food (Office action, p. 3). Again, Ohmura et al. compress an entire loaf of bread, not a slice of toasted bread. Ohmura et al. also do not expressly recite that their bread loaf has a crust much less that the crust would or might be cracked in a manner recited in the instant claims. Ohmura et al. squeeze an entire bread loaf with two pressure plates, and do not apply compression against major faces of individual toasted bread slices.

Ohmura et al. also do not teach pre-applying oil to any bread crusts prior to the compression treatment for any purpose. Speculation on the effects of such a treatment are not a substitute for a bona fide teaching in the relied upon prior art. In any event, Ohmura et al. do not teach treatments of individual toasted slices, so it is not apparent how applying oil over an entire bread loaf of Ohmura et al., even if done for some reason, and for sake of argument only, has any relevance to the present claims.

U.S.S.N. 10/774,692
Amdt. dated October 26, 2003
Reply to Office Action of July 26, 2005

10

Atty. Dkt. No. 77070

Although not addressed in the Office Action, the working examples set forth in the present invention provide evidence of the unexpected and significant advantages achieved by toasting and compressing a crusted bread slice for use in sandwich construction in the manner claimed as compared to toasted bread slices lacking the compression treatment prescribed in the instant claims. For instance, in Example 1 of the instant specification, the eating quality of the sandwiches made with slices toasted and compressed in accordance with embodiments of the present invention, especially at the crusts of the sandwich, was significantly improved. The crusts were soft but crunchy, while that of the standard build product (i.e., including toasted slices lacking a compression treatment as claimed) was hard and crouton-like. Similar results are reported in Example 2 of the instant specification. The results of these experiments described in the instant specification clearly demonstrate the beneficial effects in terms of the crust's tenderized textural qualities attained by cracking the crusts of the toasted bread slices before freezing and reheating a sandwich assembled with the modified toasted bread slices. Applicants request that this probative evidence in the instant specification be properly considered.

In view of the above, Applicants respectfully submit that a *prima facie* case of obviousness has not been established based on Ohmura et al. against any of the present claims 11-33 and, accordingly, they request withdrawal of this rejection.

U.S.S.N. 10/774,692
Amdt. dated October 26, 2005
Reply to Office Action of July 26, 2005

11

Atty. Dkt. No. 77070

CONCLUSION

In view of the above, it is believed that this application is in condition for allowance, and notice of such is respectfully requested.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Date: October 26, 2005

By: Ramon R. Hoch
Ramon R. Hoch
Reg. No. 34,108

120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603-3406
Telephone: (312) 577-7000
Facsimile: (312) 577-7007